

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MILOSLAV MULLER, Pro Se,

Plaintiff,

vs.

No. CIV 09-0500 JB/ACT

MYLES CULBERTSON, DIRECTOR
NEW MEXICO LIVESTOCK BOARD
(AGENCY),

Defendant.

ORDER

THIS MATTER comes before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition, filed April 27, 2010 (Doc. 26). The Court has reviewed all the pleadings filed by Plaintiff Miloslav Muller which address in any way the Proposed Findings and Recommended Disposition (Doc. 26), including: (i) the Plaintiff's Motion for Leave to File First Amended Complaint, filed January 28, 2010 (Doc. 18); (ii) the Plaintiff's Reply in Opposition to Defendant's Response in Opposition to Plaintiff's Motion for Leave to File First Amended Complaint, filed February 26, 2010 (Doc. 23); (iii) the Plaintiff's Response in Opposition to Defendant's Notice of Completion of Briefing Regarding Defendant's Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Claim and Memorandum in Support Thereof, filed March 3, 2010 (Doc. 24); (iv) the Plaintiff's Response in Opposition to Magistrate Judge's Proposed Findings and Recommended Disposition, filed March 8, 2010 (Doc. 25); and (v) the Plaintiff's Response in Opposition to Magistrate Judge's Proposed Findings and Recommended Disposition on Plaintiff's Motion for Leave to File First Amended Complaint, filed May 14, 2010 (Doc. 27). The Court has also reviewed the Plaintiff's Motion for Leave to File Second Amended Complaint,

filed May 25, 2010 (Doc. 28).

The Court has reviewed *de novo* Muller's Motion for Leave to File First Amended Complaint and has also reviewed the portions of the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 26) to which Muller objected in his Response in Opposition to Magistrate Judge's Proposed Findings and Recommended Disposition on Plaintiff's Motion for Leave to File First Amended Complaint (Doc. 27). The Court agrees with the Honorable Alan C. Torgerson, United States Magistrate Judge in finding that Muller's proposed first amended complaint does not assert additional facts or allegations which would change the Court's adoption of the Magistrate Judge's Proposed Findings and Recommended Disposition, filed February 23, 2010 (Doc. 22). The Court also finds that Muller's objections lack any sound basis in law or fact and finds that the Magistrate Judge's Proposed Findings and Recommended Disposition fully addressed all of Muller's arguments. The Court, therefore, will deny the Motion for Leave to File First Amended Complaint for the reasons stated in the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 26).

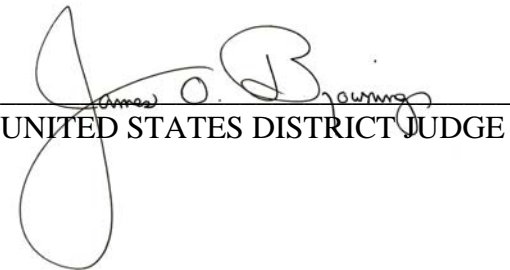
On May 25, 2010, Muller filed a Motion for Leave to File Second Amended Complaint (Doc. 28). The Court is concerned that Muller continues to file motions to amend after Judge Torgerson carefully reviewed Muller's claims and found that amendments to his federal claims would be futile. The Court has reviewed Muller's proposed Second Amended Complaint and finds that he has not asserted additional facts or allegations which establish federal claims for which he is entitled to relief and will deny Muller's Motion for Leave to File Second Amended Complaint. In his proposed Second Amended Complaint, he asserts his claims against Daniel Manzanares, Dave Fly, Timothy Hanosh, Steven England, and Terry Beals -- employees of New Mexico Livestock Board -- in their official and individual capacities, presumably in response to Judge Torgerson's

finding that Muller's § 1983 claim for violations of his Fourteenth Amendment right to due process asserted against these individuals solely in their official capacities in Muller's proposed First Amended Complaint failed as a matter of law. See Ross v. Bd. of Regents of the Univ. of NM, 599 F.3d 1114, 1117 (10th Cir. 2010)(stating that, in suits for damages, "neither a State nor its officials acting in their official capacities are 'persons' under § 1983.")(quoting Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989)). Judge Torgerson, in his Proposed Findings and Recommended Disposition (Doc. 22), addressed Muller's Fourteenth Amendment claim and construed the claim to have been directed at all of the individuals named in the Complaint -- including Manzanares, Fly, Hanosh, England, and Beals. See Proposed Findings and Recommended Disposition ¶¶ 21-26, at 9-11. Judge Torgerson found that Muller did not allege sufficient facts to assert a liberty or property interest with which Defendant Myles Culbertson or the other individuals had interfered and therefore Muller did not state an actionable Fourteenth Amendment claim. Muller's proposed Second Amended Complaint has asserted no additional facts or allegations which change Judge Torgerson's conclusion or the Court's adoption of his conclusion.

Muller also proposes to add claims under NMSA 1978 § 28-1-7 for retaliation and claims for violations of the New Mexico Constitution. The Court declines to exercise supplemental jurisdiction over Muller's state law claims. See Jackson v. N.M. Pub. Defender's Office, No. 09-2093, 2010 U.S. App. LEXIS 1439, at *7 (10th Cir. Jan. 22, 2010)("The [district] court also declined to take supplemental jurisdiction over any state law claims, as it was entitled to do after dismissing the federal claims."); Estate of Harshman v. Jackson Hole Mt. Resort Corp., 379 F.3d 1161, 1165 (10th Cir. 2004); 28 U.S.C. § 1367(c)(3).

IT IS ORDERED that: (i) the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 26) is adopted; (ii) the Plaintiff's Motion for Leave to File First Amended

Complaint (Doc. 18) is denied; and (iii) the Plaintiff's Motion for Leave to File Second Amended Complaint (Doc. 28) is denied.



UNITED STATES DISTRICT JUDGE

Parties and counsel:

Miloslav Muller
Rio Rancho, New Mexico

Plaintiff pro se

Richard J. Shane
Riley & Shane, P.A.
Albuquerque, New Mexico

Attorneys for the Defendant